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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

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6 ZACKERY CRABTREE,

Case No. 3:19-cv-00751-MMD-CLB

7 Plaintiff,

ORDER

8 v.

9 SHARON WEHRLY,

10 Defendant.

11 **I. SUMMARY**

12 *Pro se* Plaintiff Zackery Crabtree, currently incarcerated and in the custody of the  
13 Nevada Department of Corrections (“NDOC”) filed suit under 42 U.S.C. § 1983, alleging a  
14 conspiracy to violate NRS § 453.3405 between the district attorney, judge, and county  
15 sheriff involved in his criminal case—this case is focused on the county sheriff.<sup>1</sup> (ECF No.  
16 4.) Before the Court is the Report and Recommendation (“R&R” or “Recommendation”) of  
17 United States Magistrate Carla Baldwin (ECF No. 8), primarily recommending the Court  
18 dismiss this case as malicious with prejudice. Plaintiff filed an objection to Judge Baldwin’s  
19 Recommendation. (ECF No. 9.) As further explained below, the Court will overrule  
20 Plaintiff’s objection because the Court agrees with Judge Baldwin’s analysis, will fully  
21 adopt the R&R, and dismiss this case.

22 **II. BACKGROUND**

23 As relevant to Plaintiff’s objection, Judge Baldwin recommends dismissing this case  
24 as malicious, with prejudice, because it is duplicative of Case No. 3:19-cv-00755-MMD-  
25 CLB (the “755 Case”). (ECF No. 8 at 4.) She also recommends granting a document that  
26 she construed as Plaintiff’s application to proceed *in forma pauperis* (ECF No. 5), and  
27

28 <sup>1</sup>Plaintiff has filed four nearly identical cases. The other three are Case Nos. 3:19-  
cv-00750-MMD-WGC, 3:19-cv-00755-MMD-CLB, and 3:19-cv-00756-MMD-WGC.

1 denying another motion Plaintiff filed (ECF No. 3) as moot. (ECF No. 8.) Plaintiff argues  
2 in his objection that this case is not duplicative of the 755 Case because this case focuses  
3 on Defendant Sheriff Wehrly. (ECF No. 9.)

### 4 **III. LEGAL STANDARD**

5 This Court “may accept, reject, or modify, in whole or in part, the findings or  
6 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party  
7 timely objects to a magistrate judge’s report and recommendation, then the Court is  
8 required to “make a de novo determination of those portions of the [report and  
9 recommendation] to which objection is made.” *Id.* Because of Plaintiff’s objection to the  
10 R&R, the Court has undertaken a de novo review of it, including the other documents filed  
11 in this case.

### 12 **IV. DISCUSSION**

13 Following a de novo review of the R&R and the other records in this case, the Court  
14 finds good cause to accept and adopt Judge Baldwin’s R&R in full. The Court addresses  
15 below Plaintiff’s objection.

16 Plaintiff’s objection is meritless. Normally, multiple defendants should be sued in a  
17 single case arising out of the same nucleus of operative facts. This case is malicious under  
18 28 U.S.C. § 1915(d)-(e) because, as Judge Baldwin noted as to the 755 Case, and as  
19 noted *supra* at 1 n.1, it is duplicative of three other pending cases Plaintiff filed. (ECF No.  
20 8 at 4.) *See also Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (noting  
21 “[t]here is no abuse of discretion where a district court dismisses under § 1915(d) a  
22 complaint ‘that merely repeats pending or previously litigated claims.’”) (citation omitted).  
23 As this case is malicious, the Court will accept the R&R and dismiss this case with  
24 prejudice because amendment would be futile. *See id.* at 1111 (affirming dismissal with  
25 prejudice where amendment would have been futile).

### 26 **V. CONCLUSION**

27 The Court notes that Plaintiff made several arguments and cited to several cases  
28 not discussed above. The Court has reviewed these arguments and cases and determines

1 that they do not warrant discussion as they do not affect the outcome of the issues before  
2 the Court.

3 It is therefore ordered that the Report and Recommendation of Magistrate Judge  
4 Carla Baldwin (ECF No. 8) is accepted and adopted in full.

5 It is further ordered that Plaintiff's motion to correct a clerical error (ECF No. 3) is  
6 denied as moot.

7 It is further ordered that the financial certificate Judge Baldwin construed as  
8 Plaintiff's IFP application (ECF No. 5) is granted.

9 It is further ordered that Plaintiff's objection (ECF No. 9) is overruled.

10 It is further ordered that that this case is dismissed in its entirety, with prejudice.

11 The Clerk of Court is directed to close this case.

12 DATED THIS 2<sup>nd</sup> day of April 2020.



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14 MIRANDA M. DU  
15 CHIEF UNITED STATES DISTRICT JUDGE  
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